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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/463,001	12/05/2001	Allen W. Thorpe	7387	5754
1688	7590	07/02/2004	EXAMINER	
POLSTER, LIEDER, WOODRUFF & LUCCHESI 12412 POWERS COURT DRIVE SUITE 200 ST. LOUIS, MO 63131-3615			RUDDOCK, ULA CORINNA	
			ART UNIT	PAPER NUMBER
			1771	
DATE MAILED: 07/02/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

### Application No.

09/463,001

### Applicant(s)

THORPE ET AL.

### Examiner

Ula C Ruddock

### Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 10-12, 14-19, 22-27, 35, 36 and 41-55 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 10-12, 14-19, 22-27, 35, 36, and 41-55 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 18, 2004, has been entered.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### *Claim Rejections - 35 USC § 103*

3. Claims 10-12, 14-19, 22-27, 35, 36, and 41-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kirk et al. (US 5,654,063) in view of Fritze et al. (US 4,372,997). Kirk et al. disclose a pressure sensitive adhesive cover comprising an intumescent material (col 4, ln 19-21). The scrim is preferably in the form of an open mesh lattice comprising fiberglass material (col 4, ln 52-54). A felted sheet (col 4, ln 67) can be used within the fiber barrier layer. The base member may be formed of plastic sheet material (col 5, ln 61-64). Kirk et al. disclose the claimed invention except for the teaching that the fabric is embedded into a polyolefin organic resin.

Fritz et al. disclose heat and flame resistant sheet material comprising glass fiber mats that are laminated to films of polypropylene to provide a moisture barrier (col 4, ln 5-

8). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used Fritze's polypropylene film in the adhesive cover of Kirk et al., motivated by the desire to create an adhesive having a moisture barrier.

*With regard to the newly added limitations of "the active thermal protective material leaving openings in the weave of the fabric, the thermoplastic material extending into the openings and forming a physical lock with the coated fabric," it is the Examiner's position that because a fiberglass scrim is being used as the fabric, the fabric will inherently have openings and the thermoplastic material will extend into the openings of the fabric. With regard to newly added claims 54 and 55, the plastic sheet material of Kirk et al. undergoes a curing process in order to rigidly secure it to the barrier layer (col 6, ln 8-11).*

*Rejection is maintained.*

#### **Response to Arguments**

4. Applicant's arguments filed May 18, 2004, have been fully considered but they are not persuasive. Applicant argues that neither reference suggests creating a physical lock between the thermoplastic material of a composite material and a fabric coated with an active thermal protective material. This argument is not persuasive because, by its definition, a scrim is a fabric that has openings. Therefore, the thermoplastic material will adhere to the fabric and will also extend into the openings of the scrim. Applicant also argues that neither reference discloses a container as presently claimed. This argument is not persuasive because it has been held that a recitation with respect to the manner in which a claimed product is intended to be employed does not differentiate the claimed

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product from a prior art product satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ 2d 1647 (1987).

***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ula C Ruddock whose telephone number is 571-272-1481. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H. Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

UCR

*Ula Ruddock*  
**Ula C. Ruddock**  
Primary Examiner  
Tech Center 1700